

Appeal from decision of the Eastern States Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer ES 28275 (MI).

Set aside and remanded in part; affirmed in part.

1. Oil and Gas Leases: Lands Subject to--Oil and Gas Leases: Noncompetitive Leases

Where a noncompetitive oil and gas lease offer is rejected because the oil and gas interest in the land sought is not owned by the United States and the offeror presents significant evidence showing that such interest in part may be owned by the United States, the case will be remanded for the submission of additional evidence and reexamination of whether the land in question is available for oil and gas leasing.

APPEARANCES: Douglas A. Pugh, pro se.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Douglas A. Pugh has appealed the decision of the Eastern States Office, Bureau of Land Management (BLM), dated July 25, 1983, rejecting noncompetitive oil and gas lease offer ES 28275 (MI) because the mineral rights in the requested lands are not Federally owned.

The lease offer covered 200 acres of acquired lands described as the NW 1/4 NW 1/4 sec. 17 and NE 1/4 sec. 18, T. 26 N., R. 5 E., Michigan meridian, in Alcona County, Michigan. The case file contains a report from the Assistant Director for Watershed and Minerals Management of the Eastern Region of the U.S. Forest Service indicating that the minerals in these lands were reserved by the grantors. Specifically, he reports that on October 5, 1962, 0.56 acres of the NW 1/4 NW 1/4, sec. 17 were acquired from the State of Michigan which reserved all mineral, coal, oil, and gas. The remaining 39.44 acres of the NW 1/4 NW 1/4 sec. 17 and the entire NE 1/4 sec. 18 were acquired on June 26, 1929, from E. F. Clipson who also reserved all coal, gas, oil, and minerals.

Appellant asserts that, although the original grantors of the lands at issue did reserve the oil, gas, and mineral rights, those rights have since vested in the surface owner of the lands, the United States, under the "Michigan Dormant Minerals Act" and therefore were available for leasing on the date of his lease offers. In support of his argument, appellant has submitted an abstract of title to the lands at issue prepared by the Mineral Research Service of Michigan certifying that title to the lands "was indefeasibly vested in fee simple in the United States of America as of the 25th day of May, 1983, free and clear of all encumbrances, defects, interests, and all other matters whatsoever, either of record or otherwise known by him, impairing or adversely affecting the title to said property." The report also contains a copy of the Clipson deed to the United States, dated June 26, 1929, and an affidavit executed by D. Michael Bricker, an employee of the Geological Survey Division of the Department of Natural Resources of the State of Michigan, attesting that he has searched the records of the division and found no record of oil and/or gas production on the lands at issue prior to May 26, 1983.

Section 1 of Michigan Public Act 42 of 1963, the so-called Dormant Minerals Act, provides:

Any interest in oil or gas in any land owned by any person other than the owner of the surface, which has not been sold, leased, mortgaged or transferred by instrument recorded in the register of deeds office for the county where such interest is located for a period of 20 years shall, in the absence of the issuance of a drilling permit as to such interest or the actual production or withdrawal of oil or gas from said lands, or from lands covered by a lease to which such interest is subject, or from lands pooled, unitized or included in unit operations therewith, or the use of such interest in underground gas storage operations, during such period of 20 years, be deemed abandoned, unless the owner thereof shall, within 3 years after the effective date of this act or within 20 years after the last sale, lease, mortgage or transfer of record of such interest or within 20 years after the last issuance of a drilling permit as to such interest or actual production or withdrawal of oil or gas, from said lands, or from lands covered by a lease to which such interest is subject, or from lands pooled, unitized, or included in unit operations therewith, or the use of such interest in underground gas storage operations, whichever is later, record a claim of interest as hereinafter provided. Any interest in oil or gas deemed abandoned as herein provided shall vest as of the date of such abandonment in the owner or owners of the surface in keeping with the character of the surface ownership.

The phrase "drilling permit" shall mean a permit to drill an oil or gas well issued by the conservation department or its successor.

Mich. Stat. Ann. § 26.1163(1) (Callaghan 1982). Section 2 of Act 42 details the procedures for recording in the county register of deeds office a claim of interest so as to preserve oil and gas interests which have been severed from the surface estate. The section concludes with the statement that "[t]his act shall not apply to any interest in oil or gas owned by any governmental body or agency thereof." Mich. Stat. Ann. § 26.1163(2) (Callaghan 1982).

[1] It is not disputable that BLM properly rejects an oil and gas lease offer for oil and gas deposits to which the United States does not hold title. See D. M. Yates, 73 IBLA 353 (1983); W. E. Haley, 62 IBLA 294 (1982). This Board has held as well that uncertainty regarding the status of mineral deposits is sufficient grounds for rejection of a lease offer in the exercise of the Secretary's discretionary authority over leasing. Where title to a tract of land that is the subject of an oil and gas lease offer is in doubt, the burden is on the applicant to search the lands records to establish the eligibility of the tract for leasing. Lee E. McDonald, 68 IBLA 272 (1982); Donald Jumper, 24 IBLA 218 (1976); Gas Producing Enterprises, Inc., 15 IBLA 266 (1974). It appears that title to the oil and gas interests in the lands acquired by the United States from E. F. Clipson may well have vested in the United States under Michigan's Dormant Minerals Act. We cannot find this to be the case because appellant's evidence does not address the absence of all the statutorily enumerated acts that would preserve the interest in Clipson. 1/ In view of the substantial evidence presented by appellant, however, we will set aside BLM's decision as to the lands acquired from Clipson and direct BLM to afford appellant 30 days to supply additional evidence in support of his view that the United States owns the oil and gas interest at issue. See Douglas H. Willson, 58 IBLA 115 (1981). Should this issue be resolved to BLM's satisfaction, BLM should proceed to determine whether there are any other considerations that may preclude the leasing of these parcels. 2/

As the Dormant Minerals Act does not cover oil and gas interests owned by a governmental body, BLM's decision is affirmed as to the 0.56 acres of land the minerals of which were reserved to the State of Michigan.

1/ Appellant's evidence shows that there has been no transfer of the Clipson's oil and gas interest or claim of interest recorded in the county register of deeds office and that there has been no production of oil and gas from the lands during the requisite time period. It does not address issuance of a drilling permit, production from lands covered by a lease to which the oil and gas interests at issue are subject, production from lands pooled, unitized or included in unit operations with these interests, or the use of the interests in underground storage operations.

2/ As these are acquired lands presumably under the management of the Forest Service, the Forest Service must consent to the leasing of the lands under section 3 of the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. § 352 (1976). See 43 CFR 3101.7-1(a) (48 FR 33666 (July 22, 1983)).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Eastern States Office is affirmed in part and set aside and remanded in part for further action consistent with this decision.

Will A. Irwin
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

